# National Labor Relations Board Weekly Summary



## **NLRB** Cases

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Feb. 19, 2010		W-3247
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Decisions of Administrative Law Judges

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (www.nlrb.gov). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing The Office of Public Affairs, 1099 14<sup>th</sup> Street, NW, Suite 11550, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Administrative Law Judge decisions are on the Web site.

McCarthy Construction Co. (7-CA-51474, 51647; 355 NLRB No. 10) Walled Lake, MI, Feb. 2, 2010. The Board adopted the administrative law judge's conclusions that McCarthy Construction Company violated Section 8(a)(5) and (1) of the Act, by failing to respond to the Union's June 17, 2008 information request in a timely manner and by failing to meet with the Union at reasonable times. In doing so, the Board emphasized that McCarthy, without legitimate justification, did not fully respond to the Union's information request for a period of 3 months and did not respond to the Union's request for additional bargaining sessions for a period of 2-1/2 months. [HTML] [PDF]

Reversing the judge, the Board found that McCarthy also violated Section 8(a)(5) and (1), by refusing to respond to the Union's request for information about Kensington Construction Company, a suspected alter ego of McCarthy. In his decision, the judge stated that an alter-ego relationship cannot be found when a nonunion company establishes a union company and no preexisting labor obligations are disrupted. The Board observed that the judge's statement conflicted with established precedent and emphasized that unlawful motivation, while a factor to be considered, is not required to find an alter-ego relationship.

To remedy the infractions, the judge proposed, among other things, a 12-month extension of the certification period and a bargaining schedule, which required the parties to bargain face to face, in good faith, not less than 24 hours per month, in daily sessions of between 4 and 6 hours, or upon another schedule mutually agreed to by the parties, until either a collective-bargaining agreement or a good-faith impasse is reached. Given the facts presented, the Board instead extended the certification period by 9 months. The Board also declined to adopt the proposed bargaining schedule because such a remedy lacked support in Board law.

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Cement Masons Local 1, International Union of Bricklayers and Allied Craftworkers (BAC); complaint alleged violations of Section 8(a)(1) and (5). Hearing at Detroit, Mar. 18-19, 2009. Adm. Law Judge Arthur S. Amchan issued his decision May 27, 2009.

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Local 1075, Laborers' District Council (McCarthy & Smith, Inc.) (7-CC-1831, 1832; 355 NLRB No. 6) Marysville, MI, Jan. 28, 2010. The Board affirmed the administrative law judge's finding that the Respondents violated Section 8(b)(4)(i) and (ii)(B) of the Act, by picketing at a "common situs" involving both neutral and primary employers, without properly identifying the primary employers and by continuing to picket at the neutral gate, after a valid dual-gate system was established. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charges filed by McCarthy & Smith, Inc.; complaint alleged violations of Section 8(b)(4)(i) and (ii)(B). Hearing at Detroit on Aug. 26, 2009. Adm. Law Judge Ira Sandron issued his decision Oct. 29, 2009.

#### UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers.)

### **DECISION AND ORDER** [remanding proceeding to Regional Director for further appropriate action]

2 Sisters Food Group, Inc., Riverside, CA, 21-RC-21137, Feb. 4, 2010. (Chairman Liebman and Member Schaumber participated.)

St. Catherine Healthcare and Rehabilitation Center, LLC, Albuquerque, NM, 28-RC-6661, Feb. 1, 2010. (Chairman Liebman and Member Schaumber participated.)

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#### **DECISIONS OF ADMINISTRATIVE LAW JUDGES**

Albertson's LLC (Food & Commercial Workers Local 640) El Paso, TX Feb. 2, 2010. 28-CA-22546; JD(ATL)-01-10, Judge William N. Cates.

New England Confectionary Co. (Bakery Workers Local 348) Revere, MA Feb. 2, 2010. 1-CA-45240, 45404; JD-07-10, Judge Ira Sandron.

Summit Healthcare Assoc. d/b/a Summit Regional Medical Center (an Individual) Show Low, AZ Feb. 4, 2010. 28-CA-22308; JD(SF)-05-10, Judge James M. Kennedy.

*Alan Ritchey, Inc.* (Longshoremen and Warehouse Local 6) Richmond, CA Feb. 4, 2010. 32-CA-18149, et al.; JD(SF)-03-10, Judge Burton Litvack.

Ampersand Publishing, LLC d/b/a Santa Barbara News-Press (Teamsters) Santa Barbara, CA Feb. 5, 2010. 31-CA-29253; JD(SF)-04-10, Judge Lana Parke.

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